

AMENDED IN SENATE MARCH 29, 2012

**SENATE BILL**

**No. 1108**

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**Introduced by Senator Padilla**

February 17, 2012

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An act to amend ~~Section 313 of, and to repeal Section 52164.6 of, Sections 313 and 60810 of~~ the Education Code, relating to English learners.

LEGISLATIVE COUNSEL'S DIGEST

SB 1108, as amended, Padilla. English learners: reclassification.

~~Existing~~

*(1) Existing* law requires each school district that has one or more pupils who are English learners, and to the extent required by federal law, a county office of education and a charter school, to assess the English language development of each of those pupils in order to determine their level of proficiency. Existing law requires the State Department of Education, with the approval of the State Board of Education, to establish procedures for conducting the assessment and for the reclassification of a pupil from English learner to English proficient. ~~Existing law requires the reclassification procedures developed by the department to use multiple criteria, including, but not limited to, 4 specified criteria, in determining whether to reclassify a pupil as proficient in English.~~

~~This bill would instead require the reclassification procedures to use only 3 of the 4 specified criteria and would no longer require the comparison of the pupil's basic skills performance against an empirically established range of basic skills performance based on the performance of English-proficient pupils of the same age.~~

~~The inoperative Chacon-Mosecone Bilingual-Bicultural Education Act of 1976 contains provisions regarding the identification criteria and allocation formulas that existing law requires to be used for funding purposes. One of the inoperative provisions requires a school district in which pupils of limited English proficiency are enrolled to establish reclassification criteria, requires the classification process to use multiple criteria that includes specified elements, and requires the State Board of Education to adopt regulations setting forth standards for language reclassification criteria to be adopted by school districts.~~

~~This bill would repeal the reclassification provision of the inoperative law.~~

*Existing law requires the Superintendent of Public Instruction to apportion funds appropriated for purposes of assessing the English language development of pupils whose primary language is a language other than English to enable school districts to use the California English language development test to identify pupils who are limited English proficient, determine the level of English language proficiency of those pupils, and to assess the progress of those pupils in acquiring the skills of listening, reading, speaking, and writing in English.*

*This bill, for the 2013–14 school year, would condition the receipt of funds appropriated for purposes of assessing the English language development of pupils whose primary language is a language other than English on a school district, county office of education, and charter school reporting, by July 1, 2013, to the department the criteria the school district, county office of education, or charter school uses to determine whether or not to reclassify a pupil as English proficient, thereby imposing a state-mandated local program. The bill would require the department to analyze the reported criteria, determine which criteria represent the best practices in reclassifying pupils as English proficient, and, by January 1, 2014, report to the Legislature the best practices for objectively assessing language proficiency, evaluating the academic performance of an English learner, and comparing the performance of an English learner in basic skills against a range of performance in basic skills based upon the performance of English proficient pupils of the same age to demonstrate whether the English learner is sufficiently proficient in English to participate effectively in a curriculum designed for pupils of the same age whose native language is English.*

*The bill also would require the department, beginning with the 2015–16 school year, to determine and recommend to the state board*

(a) a level of English language proficiency that demonstrates whether the English proficiency of an English learner is equivalent to the English proficiency of pupils of the same age whose native language is English, (b) best practices for a teacher to evaluate and review the ability of an English learner to participate effectively in a curriculum designed for pupils of the same age whose native language is English, and (c) a level of academic performance that demonstrates an ability to participate effectively in a curriculum designed for pupils of the same age whose native language is English.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 313 of the Education Code is amended  
2 to read:  
3 313. (a) Each school district that has one or more pupils who  
4 are English learners and, to the extent required by federal law,  
5 each county office of education and each charter school shall assess  
6 the English language development of each pupil in order to  
7 determine the level of proficiency for purposes of this chapter.  
8 (b) The department, with the approval of the state board, shall  
9 establish procedures for conducting the assessment required  
10 pursuant to subdivision (a) and for the reclassification of a pupil  
11 from English learner to English proficient.  
12 (c) Commencing with the 2000–01 school year until subdivision  
13 (d) is implemented, the assessment shall be conducted upon initial  
14 enrollment, and annually, thereafter, during a period of time  
15 determined by the Superintendent and the state board. The annual  
16 assessments shall continue until the pupil is reclassified as English  
17 proficient. The assessment shall primarily utilize the English  
18 language development test identified or developed by the

1 Superintendent pursuant to Chapter 7 (commencing with Section  
2 60810) of Part 33 of Division 4 of Title 2.

3 (d) (1) This subdivision shall not be implemented unless and  
4 until the department receives written documentation from the  
5 United States Department of Education that federal law permits  
6 the implementation of the changes set forth in this subdivision or  
7 until the 2013–14 school year, whichever occurs later.

8 (2) The assessment shall be conducted annually during a period  
9 that commences on the day upon which 55 percent of the  
10 instructional year is completed through July 1 of that calendar  
11 year. Annual assessments shall continue until the pupil is  
12 reclassified as English proficient. The annual assessment shall  
13 primarily utilize the English language development test identified  
14 or developed by the Superintendent pursuant to Chapter 7  
15 (commencing with Section 60810) of Part 33 of Division 4 of Title  
16 2.

17 (3) The assessment shall be conducted upon the initial  
18 enrollment of a pupil in order to provide information to be used  
19 to determine if the pupil is an English learner.

20 (A) If the initial enrollment of a pupil occurs on a date outside  
21 of the testing period identified pursuant to paragraph (2), the prior  
22 year's annual assessment for the grade in which the pupil is  
23 enrolling shall be used for this purpose.

24 (B) If the initial enrollment of a pupil occurs on a date within  
25 the testing period identified pursuant to paragraph (2), the initial  
26 assessment of the pupil shall be conducted as part of the annual  
27 assessment conducted pursuant to paragraph (2).

28 (4) Notwithstanding paragraph (2), a school district shall assess  
29 the English language development of a pupil pursuant to this  
30 section no more than one time per school year.

31 (e) The assessments conducted pursuant to subdivision (d) shall  
32 be conducted in a manner consistent with federal statutes and  
33 regulations.

34 (f) The reclassification procedures developed by the department  
35 shall utilize the following criteria in determining whether to  
36 reclassify a pupil as English ~~proficient~~ *proficient*:

37 (1) Assessment of language proficiency using an objective  
38 assessment instrument, including, but not limited to, the English  
39 language development test that is developed or acquired pursuant  
40 to Section 60810. ~~The department shall determine the score for~~

~~reclassification.~~ *Beginning with the 2015–16 school year, the department, using the information provided pursuant to subparagraph (B) of paragraph (4) of subdivision (a) of Section 60810, shall determine and recommend to the state board a level of English language proficiency that demonstrates whether the English proficiency of an English learner is equivalent to the English proficiency of pupils of the same age whose native language is English.*

(2) *Teacher evaluation, including, but not limited to, a review of the pupil’s curriculum mastery. Beginning with the 2015–16 school year, the department, using the information provided pursuant to subparagraph (B) of paragraph (4) of subdivision (a) of Section 60810, shall determine and recommend to the state board the best practices for a teacher to evaluate and review the ability of an English learner to participate effectively in a curriculum designed for pupils of the same age whose native language is English.*

(3) *Parental opinion and consultation.*

(4) *Comparison of the performance of the pupil in basic skills against an empirically established range of performance in basic skills upon the performance of English proficient pupils of the same age that demonstrates whether the pupil is sufficiently proficient in English to participate effectively in a curriculum designed for pupils of the same age whose native language is English. Beginning with the 2015–16 school year, the department, using the information provided pursuant to subparagraph (B) of paragraph (4) of subdivision (a) of Section 60810, shall determine and recommend to the state board a level of academic performance that demonstrates an ability to participate effectively in a curriculum designed for pupils of the same age whose native language is English.*

(g) *This section does not preclude a school district or county office of education from testing English learners more than once in a school year if the school district or county office of education chooses to do so.*

*SEC. 2. Section 60810 of the Education Code is amended to read:*

60810. (a) (1) *The Superintendent shall review existing tests that assess the English language development of pupils whose primary language is a language other than English. The tests shall*

1 include, but not be limited to, an assessment of achievement of  
2 these pupils in English reading, speaking, and written skills. The  
3 Superintendent shall determine which tests, if any, meet the  
4 requirements of subdivisions (b) and (c). If any existing test or  
5 series of tests meets these criteria, the Superintendent, with  
6 approval of the state board, shall report to the Legislature on its  
7 findings and recommendations.

8 (2) If no suitable test exists, the Superintendent shall explore  
9 the option of a collaborative effort with other states to develop a  
10 test or series of tests and share test development costs. If no suitable  
11 test exists, the Superintendent, with approval of the state board,  
12 may contract to develop a test or series of tests that meets the  
13 criteria of subdivisions (b) and (c) or may contract to modify an  
14 existing test or series of tests so that it will meet the requirements  
15 of subdivisions (b) and (c).

16 (3) The Superintendent and the state board shall release a request  
17 for proposals for the development of the test or series of tests  
18 required by this subdivision. The state board shall select a  
19 contractor or contractors for the development of the test or series  
20 of tests required by this subdivision, to be available for  
21 administration during the 2000–01 school year.

22 (4) (A) The Superintendent shall apportion funds appropriated  
23 to enable school districts to meet the requirements of subdivision  
24 (d). The state board shall establish the amount of funding to be  
25 apportioned per test administered, based on a review of the cost  
26 per test.

27 (B) *As a condition of the receipt of funds for the 2013–14 school*  
28 *year, a school district, county office of education, and charter*  
29 *school shall report, by July 1, 2013, to the department the criteria*  
30 *the school district, county office of education, or charter school*  
31 *uses to determine whether or not to reclassify a pupil as English*  
32 *proficient.*

33 (5) An adjustment to the amount of funding to be apportioned  
34 per test is not valid without the approval of the Director of Finance.  
35 A request for approval of an adjustment to the amount of funding  
36 to be apportioned per test shall be submitted in writing to the  
37 Director of Finance and the chairpersons of the fiscal committees  
38 of both houses of the Legislature with accompanying material  
39 justifying the proposed adjustment. The Director of Finance is  
40 authorized to approve only those adjustments related to activities

1 required by statute. The Director of Finance shall approve or  
2 disapprove the amount within 30 days of receipt of the request and  
3 shall notify the chairpersons of the fiscal committees of both houses  
4 of the Legislature of the decision.

5 (b) (1) The test or series of tests developed or acquired pursuant  
6 to subdivision (a) shall have sufficient range to assess pupils in  
7 grades 2 to 12, inclusive, in English listening, speaking, reading,  
8 and writing skills. Pupils in kindergarten and grade 1 shall be  
9 assessed in English listening and speaking, and, once an assessment  
10 is developed, early literacy skills. The early literacy assessment  
11 shall be administered for a period of three years beginning after  
12 the initial administration of the assessment or until July 1, 2012,  
13 whichever occurs first. Six months after the results of the last  
14 administered assessment are collected, but no later than January  
15 1, 2013, the department shall report to the Legislature on the  
16 administration of the kindergarten and grade 1 early literacy  
17 assessment results, as well as on the administrative process, in  
18 order to determine whether reauthorization of the early literacy  
19 assessment is appropriate.

20 (2) In the development and administration of the assessment  
21 for pupils in kindergarten and grade 1, the department shall  
22 minimize any additional assessment time, to the extent possible.  
23 To the extent that it is technically possible, items that are used to  
24 assess listening and speaking shall be used to measure early literacy  
25 skills. The department shall ensure that the test and procedures for  
26 its administration are age and developmentally appropriate. Age  
27 and developmentally appropriate procedures for administration  
28 may include, but are not limited to, one-on-one administration, a  
29 small group setting, and orally responding or circling a response  
30 to a question.

31 (c) The test or series of tests shall meet all of the following  
32 requirements:

33 (1) Provide sufficient information about pupils at each grade  
34 level to determine levels of proficiency ranging from no English  
35 proficiency to fluent English proficiency with at least two  
36 intermediate levels.

37 (2) Have psychometric properties of reliability and validity  
38 deemed adequate by technical experts.

39 (3) Be capable of administration to pupils with any primary  
40 language other than English.

1 (4) Be capable of administration by classroom teachers.

2 (5) Yield scores that allow comparison of the growth of a pupil  
3 over time, can be tied to readiness for various instructional options,  
4 and can be aggregated for use in the evaluation of program  
5 effectiveness.

6 (6) Not discriminate on the basis of race, ethnicity, or gender.

7 (7) Be aligned with the standards for English language  
8 development adopted by the state board pursuant to Section 60811.

9 (8) Be age and developmentally appropriate for pupils.

10 (d) The test shall be used for the following purposes:

11 (1) To identify pupils who are limited English proficient.

12 (2) To determine the level of English language proficiency of  
13 pupils who are limited English proficient.

14 (3) To assess the progress of limited-English-proficient pupils  
15 in acquiring the skills of listening, reading, speaking, and writing  
16 in English.

17 (e) (1) A pupil in any of grades 3 to 12, inclusive, shall not be  
18 required to retake those portions of the test that measure English  
19 language skills for which he or she has previously tested as  
20 advanced within each appropriate grade span, as determined by  
21 the department in accordance with paragraph (8) of subdivision  
22 (c).

23 (2) Notwithstanding paragraph (1), a pupil in any of grades 10  
24 to 12, inclusive, shall not be required to retake those portions of  
25 the test that measure English language skills for which he or she  
26 has previously tested as early advanced or advanced.

27 (3) This subdivision shall not be implemented until the test  
28 publisher's contract that is in effect on January 1, 2012, expires.

29 (4) This subdivision shall not be implemented unless and until  
30 the department receives written documentation from the United  
31 States Department of Education that implementation is permitted  
32 by federal law.

33 (f) (1) *The department, in consultation with the state board,*  
34 *experts in the field of English learners, teachers of English*  
35 *learners, and local educational agencies, shall analyze the criteria*  
36 *reported pursuant to subparagraph (B) of paragraph (4) of*  
37 *subdivision (a) and determine which criteria represent the best*  
38 *practices in reclassifying pupils as English proficient. By January*  
39 *1, 2014, the department shall report to the Legislature the best*  
40 *practices for accomplishing all of the following:*



1     (A) Objectively assessing language proficiency.

2     (B) A teacher evaluating the academic performance of an  
3     English learner.

4     (C) Comparing the performance of an English learner in basic  
5     skills against an empirically established range of performance in  
6     basic skills based upon the performance of English proficient  
7     pupils of the same age to demonstrate whether the English learner  
8     is sufficiently proficient in English to participate effectively in a  
9     curriculum designed for pupils of the same age whose native  
10    language is English.

11    (2) The requirement for submitting a report imposed under this  
12    subdivision is inoperative on January 1, 2017.

13    (3) The report to be submitted pursuant to this subdivision shall  
14    be submitted in compliance with Section 9795 of the Government  
15    Code.

16    SEC. 3. If the Commission on State Mandates determines that  
17    this act contains costs mandated by the state, reimbursement to  
18    local agencies and school districts for those costs shall be made  
19    pursuant to Part 7 (commencing with Section 17500) of Division  
20    4 of Title 2 of the Government Code.

21    ~~SEC. 2. Section 52164.6 of the Education Code is repealed.~~